

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA MICHAELSON-DUFFY and DEPARTMENT OF LABOR,
OFFICE OF WORKERS' COMPENSATION PROGRAMS, Seattle, WA

*Docket No. 03-1768; Submitted on the Record;
Issued September 24, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's entitlement to medical benefits effective June 13, 2003, on the grounds that she had no further residual condition due to her accepted thoracic back strain and right lateral epicondylitis; (2) whether the Office properly rescinded its acceptance of appellant's claim for lumbar strain; (3) whether appellant sustained a subluxation of the rib heads causally related to factors of her federal employment; and (4) whether the Office properly denied authorization for chiropractic services.

On November 2, 2000 appellant, then a 52-year-old senior claims examiner, filed an occupational disease claim alleging that she sustained right elbow and shoulder problems due to factors of her federal employment. Appellant did not stop work.

In support of her claim, appellant submitted chart notes dated July 27 to November 6, 2000 from her attending physician, Dr. Jeffrey Wolff-Gee. In a chart note dated July 27, 2000, Dr. Wolff-Gee treated appellant for right lateral epicondylitis. In a chart note dated September 18, 2000, he noted findings of right shoulder blade pain possibly due to a subluxed rib head. On October 9, 2000 Dr. Wolff-Gee recommended chiropractic treatment. In a chart note dated October 25, 2000, he diagnosed back strain, right lateral epicondylitis and a possible subluxed rib head. He noted that appellant was "concerned that her workplace may have been part of the problem." In a chart note dated November 6, 2000, Dr. Wolff-Gee related that appellant "has had slowly progressive problems with neck discomfort, arm discomfort and fatigue-ability of the forearms over the last several weeks to months. She believes this is related to poor ergonomics at her workplace."

In a report dated November 13, 2000, Dr. Wolff-Gee noted that appellant previously had sustained resolved bilateral epicondylitis due to her employment. He indicated that on July 27, 2000 appellant had symptoms of right lateral epicondylitis. Dr. Wolff-Gee stated:

“September 18, [2000] she was seen for a full physical examination, which included attention to a problem of right back pain that would radiate to the right chest. At that time I felt that she had a subluxed rib head, which is often a problem related to sustained poor posture. At that time she was wondering if her workplace environment might be contributing....”

Dr. Wolff-Gee noted, “I now understand that [appellant] may be having troubles with the left lateral epicondyle as well.” He stated:

“I do believe that on a more probable than not basis that her workplace environment has contributed to these issues and that a full effort at ergonomic work space restructuring will contribute greatly to her recovery.”

On February 5, 2001 the Office accepted appellant’s claim for lumbar strain and right lateral epicondylitis. The Office found that appellant had not established the causal relationship between factors of her federal employment and left lateral epicondylitis and a subluxed rib head.

In a note dated February 22, 2001, Dr. Wolff-Gee indicated that the “presumed area of subluxed rib heads” was T4 to T7.¹

By letter dated March 2, 2001, appellant informed the Office that she had not claimed that she sustained a lumbar strain and requested that it be removed from the list of accepted conditions. Appellant further questioned why the Office had not accepted that she sustained a subluxed rib head as causally related to her federal employment.

By letter dated April 26, 2001, the Office requested that Dr. Wolff-Gee clarify the number of sessions and the nature and extent of chiropractic care prescribed for appellant. In an April 27, 2001 response, Dr. Wolff-Gee indicated that he did “not have a consult[ation] note from the chiropractor who treated [appellant] in October 2000 and can[not] make a statement about the number of treatments she received for that problem.”

On June 1, 2001 an Office medical adviser reviewed appellant’s case record and noted that the Office should not have accepted appellant’s claim for lumbosacral strain. He further disagreed with Dr. Wolff-Gee’s diagnosis of a subluxation at T4 to T7. The Office medical adviser opined that a thoracic subluxation could not occur from a “nontraumatic cause.” He found that appellant possibly sustained a thoracic strain.

On November 19, 2001 the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. William G. Boettcher, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In a report dated December 10, 2001, Dr. Boettcher discussed appellant’s current complaints of elbow discomfort when lifting and noted that she did

¹ On March 19, 2001 Dr. Wolff-Gee treated appellant for neck strain.

not “regard the chest/thoracic symptoms as significant at this time.” He diagnosed right elbow epicondylitis and thoracic strain, which he attributed to factors of her federal employment “on a more probably than not basis.” Dr. Boettcher opined that appellant’s thoracic strain had resolved. He further stated “[appellant] does not have subluxation of rib heads. Such a condition could only exist with major trauma. More than likely, she has had a thoracic muscular strain related to the occupational exposure.” Dr. Boettcher further noted that appellant did not have symptoms of a lumbar strain “by her own statement.”

Based on Dr. Boettcher’s opinion the Office accepted that appellant sustained thoracic strain, which had resolved as of December 10, 2001.

In a decision dated May 31, 2002, the Office terminated appellant’s medical benefits effective that date on the grounds that it had rescinded her claim for lumbar strain and her thoracic back strain had resolved as of December 10, 2001. Appellant requested a review of the written record. By decision dated April, 15, 2002, a hearing representative set aside the Office’s May 31, 2002 decision. The hearing representative found that the Office did not determine whether appellant had residuals of her right epicondylitis prior to terminating her compensation. The hearing representative further noted that Dr. Boettcher did not discuss the mechanism of injury or provide a rationale for his finding that appellant had no further residuals of her thoracic strain. The hearing representative remanded the case for the Office to obtain a supplemental report from Dr. Boettcher addressing whether appellant had continuing residuals of her right lateral epicondylitis and providing rationale for his conclusion that she had no further residuals of her thoracic strain.

Dr. Boettcher submitted a supplemental report dated April 28, 2003, in response to the Office’s request for additional information. He indicated that he had diagnosed a thoracic strain due to poor posture based on the history as related by appellant. Dr. Boettcher opined that appellant’s thoracic strain had resolved both because of the amount of time between the strain in July 2000 and his report in December 2001 and because she “described very few, if any, symptoms in that location at the time of my examination.” In regard to appellant’s accepted condition of right lateral epicondylitis, Dr. Boettcher related:

“[Appellant] still had a few subjective complaints relative to the epicondylitis of her right elbow. [Appellant] stated that she had some discomfort by lifting as I indicated in my report but the complaints she did not regard as very significant. I would regard her epicondylitis as resolved except for some subjective complaints as of the date of my examination.”

On May 9, 2003 the Office notified appellant that it proposed to terminate her medical benefits. In a response dated May 26, 2003, appellant argued that Dr. Boettcher’s opinion was speculative and again requested authorization for chiropractic services. By decision dated June 16, 2003, the Office terminated appellant’s compensation benefits effective June 13, 2003, on the grounds that she had no further residuals of her accepted conditions of thoracic strain and right lateral epicondylitis. The Office further found that appellant had not established that she sustained an employment-related rib head subluxation and rescinded acceptance of her claim for lumbar strain. The Office noted that Dr. Boettcher acted as an impartial medical specialist on the issue of whether appellant sustained a subluxation of the rib heads and as a second opinion

physician on the issue of whether she sustained a lumbar strain or residuals of her thoracic strain and right epicondylitis. The Office further denied authorization for chiropractic services.

The Board finds that the Office met its burden of proof to terminate appellant's entitlement to medical benefits effective June 13, 2003, on the grounds that she had no further residual condition due to her accepted thoracic back strain and right lateral epicondylitis.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁵ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.

The Board finds that Dr. Boettcher's opinion, which is based on a proper factual and medical history, is well rationalized and supports that appellant's thoracic strain and right lateral epicondylitis ceased by June 13, 2003, the date the Office terminated her entitlement to medical benefits. Dr. Boettcher accurately summarized the relevant medical evidence, provided findings on examination and reached conclusions regarding appellant's condition, which comported with his findings.⁶ Dr. Boettcher noted that appellant had no significant complaints of continued thoracic problems and had only "a few subjective complaints relative to the epicondylitis of her right elbow." On examination, Dr. Boettcher found that appellant had full range of motion of the elbow and "no elbow discomfort on the right with resisted dorsiflexion of the right wrist." He further noted that appellant did not have "any tenderness specifically over the right elbow or the posterior thorax on the right side." Dr. Boettcher concluded that appellant's thoracic strain had resolved and that her epicondylitis of the right elbow "had resolved except for some subjective complaints."⁷ The Board, therefore, finds that the Office properly determined that appellant had no further residuals of her thoracic strain and right lateral epicondylitis based on the opinion of Dr. Boettcher.

The Board further finds that the Office properly rescinded its acceptance of appellant's claim for lumbar strain.

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁶ *See Melvina Jackson*, 38 ECAB 443 (1987).

⁷ Generally, subjective complaints of symptoms unsupported by objective physical findings of disability are not compensable. *John L. Clark*, 32 ECAB 1618 (1981). The Board has held that subjective complaints can be a basis for compensation only when there is a proven basis for the pain. *See Barry C. Petterson*, 52 ECAB 120 (2000).

The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128 of the Federal Employees' Compensation Act and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.⁸ The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.⁹

The report of Dr. Boettcher constitutes reliable evidence sufficient to support the Office's rescission of appellant's claim for lumbar strain. He found that appellant did not sustain a lumbar strain based on her "own statement." Appellant notified the Office following receipt of its acceptance letter that she had not claimed that she sustained an employment-related lumbar strain. Accordingly, the Office properly rescinded its acceptance of lumbar strain.

The Board further finds that appellant has not met her burden of proof to establish that she sustained a subluxation of the rib heads causally related to factors of her federal employment.

Where there exists a conflict in medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.¹⁰

In this case, the Office determined that a conflict existed between appellant's physician, Dr. Wolff-Gee, who opined that appellant had a subluxation of the rib head and the Office medical adviser, who found that appellant did not have a rib head subluxation. The Office referred appellant to Dr. Boettcher, a Board-certified orthopedic surgeon, for resolution of the conflict.

The Board finds that Dr. Boettcher's report is sufficiently well rationalized to constitute the weight of the medical opinion evidence. Dr. Boettcher provided a thorough review of the factual and medical background of appellant's claim and accurately summarized the relevant medical evidence. Dr. Boettcher diagnosed a thoracic strain rather than a subluxation of a rib head, which he explained "could only exist with major trauma." Appellant, consequently has not met her burden of proof to establish that she sustained an employment-related subluxation of a rib head.¹¹

The Board further finds that the Office properly denied authorization for chiropractic services.

⁸ *Eli Jacobs*, 32 ECAB 1147, 1151 (1981).

⁹ *See* 20 C.F.R. § 10.610.

¹⁰ *Kathryn Haggerty*, 45 ECAB 383 (1994).

¹¹ Appellant contends that the Office improperly failed to provide Dr. Boettcher with a copy of the definition of a subluxation as found in FECA Bulletin 84-71. However, the definition of a subluxation in FECA Bulletin 84-71 and in the Office's regulations at 20 C.F.R. § 10.5(bb), refers to a subluxation of the vertebrae rather than a rib head.

An employee is entitled to receive all medical services, appliances or supplies, which a qualified physician prescribes or recommends and which the Office considers necessary to treat a work-related injury.¹² Section 8101(3) of the Act, which defines services and supplies, limits reimbursable chiropractic services to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.¹³ Furthermore, while the Office is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition. To be entitled to reimbursement of medical expenses by the Office, appellant must establish a causal relationship between the expenditure and the treatment by submitting rationalized medical evidence supporting such a connection and demonstrating that the treatment is necessary and reasonable.¹⁴

In this case, the record contains a report dated October 13, 2000 from appellant's chiropractor. However, as appellant's chiropractor did not diagnose a subluxation as demonstrated by x-ray to exist, he cannot be considered a "physician" within the meaning of the Act.

The Board, however, has noted exceptions to the general rule that services rendered by a chiropractor are not payable when they do not consist of manual manipulation of the spine to correct a subluxation demonstrated to exist by x-ray. Once a claim is accepted by the Office and a particular physician is designated as the treating physician, bills for "physical therapy" treatments provided by a chiropractor, which are prescribed or authorized by the treating physician, are payable by the Office regardless of whether the chiropractor diagnosed a subluxation based on x-rays.¹⁵ In a chart note dated October 9, 2000, Dr. Wolff-Gee, appellant's attending physician, recommended that she receive chiropractic treatment. However, when asked by the Office to clarify the nature of chiropractic care prescribed for appellant, Dr. Wolff-Gee stated that he did "not have a consult[ation] note from the chiropractor who treated [appellant] in October 2000 and can[not] make a statement about the number of treatments she received for that problem." While a referral by an authorized physician is sufficient to obligate the Office to pay for reasonable and necessary treatment for an employment-related condition by another physician,¹⁶ where a physician refers a claimant to a nonphysician for treatment, more control and direction by the referring physician must be shown.¹⁷ Neither Dr. Wolff-Gee's October 9, 2000 chart note or April 27, 2001 response to the Office discussed the nature and extent of the chiropractic treatment contemplated. The Board, therefore, finds that the evidence of record fails to establish that a qualified physician prescribed, recommended or directed chiropractic treatment as required under section 8103 of the Act.

¹² *Lisa DeLindsay*, 51 ECAB 634 (2000).

¹³ 5 U.S.C. § 8101(3); see *Thomas W. Stevens*, 50 ECAB 288 (1999).

¹⁴ See *Dale E. Jones*, 48 ECAB 648 (1997).

¹⁵ *Lawrence A. Wilson*, 51 ECAB 684 (2000).

¹⁶ *David L. Sala*, 38 ECAB 419 (1987).

¹⁷ *Rebecca Ortiz*, 42 ECAB 134, 138 (1990).

The decision of the Office of Workers' Compensation Programs dated June 16, 2003 is hereby affirmed.

Dated, Washington, DC
September 24, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member